

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6559 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DHIRAJLAL R SODHA

Versus

CHAIRMAN/MANAGER-AMRELI NAGRIKSAHAKARI BANK LTD

Appearance:

1. Special Civil Application No. 6559 of 1988
PARTY-IN-PERSON for Petitioner No. 1
MR SHIRISH JOSHI for Respondent No. 1,3
Ms MANISHA LAVKUMAR, AGP for Respondent No. 2
..... for Respondent No. 4-6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/12/2002

ORAL JUDGEMENT

What is challenged in this petition under Article
226 of the Constitution is the amendments to the bye-laws
of respondent No.1-Amreli Nagrik Sahakari Bank Ltd.

which is an urban co-operative bank registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act"). The petitioner has also challenged the elections to the managing committee of the respondent-society which were held on 29.9.1988.

2. As far as the challenge to the elections held in 1988 is concerned, the petition has obviously become infructuous as the term of the body elected in 1988 has already come to end long back by afflux of time. It is, therefore, not necessary to advert to that particular challenge. However, the challenge to the amendment of the bye-laws subsists as elections are being held under the said bye-laws.

3. The controversy had arisen in the following context :-

The elections to the managing committee of the respondent society were earlier held in 1987 when the present petitioner lost the election and also lost his deposit. When the petitioner again filed his nomination for the elections of the managing committee scheduled to be held on 25.9.1988, the petitioner's nomination form was rejected on the ground that the petitioner had lost the election in 1987 and also lost his deposit at the said elections held in 1987 and, therefore, by virtue of the bye-laws containing the election rules, the petitioner was disqualified from contesting.

4. The relevant extracts of the Election Rules before the amendment, after the amendment and also the amendment made during pendency of the petition are set out hereunder.

Rule 13(b) - Before the amendment (Annexure "E")

The candidate deposit of Rs.500 and Rs.1/- for nomination form will be taken from each candidate, whoever candidate gets less than 10% of total votes, the deposit of such candidate will be forfeited and other candidates will be refunded their deposits. The deposits forfeited thus will be credited as miscellaneous income and at the end of the year it will be taken in the accounts for profit and loss.

Rule 13(b) after the amendment made in August, 1987

The maximum three copies of the voters list of the authorized candidates who want to contest the election with costs as prescribed. The deposit of Rs.500/- and Rs.1/- for the nomination form will be received from all the candidates. The maximum of two nomination forms will be supplied at prescribed costs. If any of the candidates got less than 20% of vote then his deposit will be forfeited and the remaining candidates will be refunded the amount of deposit. Accordingly forfeited deposit will be credited as election expenses. If any candidate loses the election and gets forfeited the deposit, thereafter they will not be eligible for contesting the election for three years.

Rule 13(b) as amended in August, 1998 (Annexure III to the reply affidavit)

For contesting elections, the eligible candidates shall get a maximum of three copies of voters list at the rate prescribed. From each candidate Rs.10,000/- shall be charged as deposit and Rs.5/- for nomination form. A maximum of two nomination form can be obtained at prescribed rate. If any candidate receives less than 20% votes of the total voting, the deposit of such candidate shall be forfeited. A candidate who has lost the election and whose deposit is forfeited, shall not be eligible to contest the elections held within the next three years.

5. The challenge in the present petition is four fold. The first challenge is to the insertion of Rule 6 requiring that the candidate ought to have deposited atleast Rs.10,000/- with the bank for atleast three years as on 31st March of the year in which the elections are being held. The second challenge is to the upward revision of deposit from Rs.500/- to Rs.10,000/- as per the amendment made in the year 1998. The third challenge is to the disqualification attached to the candidate who loses in the election and whose deposit is confiscated. The objection is to the disqualification that such a candidate cannot contest the elections in the next three consecutive years.

6. As far as the first challenge is concerned, it is submitted by the party-in-person that the requirement that the candidate ought to have deposited Rs.10,000/= with the bank for a period of at least three years is illegal. Of course, the District Registrar of Co-operative Societies while granting approval to the amendment of the bye-laws had stipulated that the amount of Rs.10,000/- be substituted by the amount of Rs.7,500/= as per the communication dated 28.8.1998.

No fault can be found with the aforesaid amendment to the bye-laws. The Court need not dilate on this issue any further because the rationale of the amendment is also now accepted by the Legislature while making the Gujarat Co-operative Societies (Amendment) Act, 2002. Section 115-C lays down the qualifications and disqualifications for being a committee member. The relevant provisions of sub-sections (1) and 2(a) read as under :-

"115-C. Qualifications and disqualifications for being committee member.- (1) A person shall not be eligible for being chosen as a committee member unless he,-

(a) is continuously a member of the bank for a period of not less than three years and continues to be such member, and

(b) has deposited in the bank an amount of not less than twenty thousand rupees and continues to so deposit.

(2)(a) A person shall be disqualified for being a committee member if he ceases to possess any of the qualifications mentioned in clauses (a) and (b) of sub-sec. (1)."

Thus by statutory amendment, a candidate is required to have deposited in the bank an amount of not less than Rs.20,000/- meaning thereby the candidate must have a stake in the running of the bank. The amendment to the bye-laws of the respondent-society will, therefore, now have to be in consonance with the aforesaid provisions and, therefore, the requirement to have a specified amount deposited with the respondent bank for three consecutive years will not survive, but the candidate will have to have an amount of not less than Rs.20,000/- deposited with the bank and such deposit must continue. Otherwise, even if the candidate having Rs.20,000/- as a deposit with the bank is elected as a

committee member and thereafter if his deposit is less than Rs.20,000/-, such a person would be disqualified from continuing to be a committee member.

7. As regards the second challenge to the bye-laws that a person who is a defaulter cannot be permitted to contest the elections, such challenge has to be stated only to be rejected. A person who is a defaulter of the society which he is to govern cannot be expected to run the affairs of the society in the interests of the society. Rule 32 reads as under :-

"32. Qualifications for the members of the committee.- (1) Every member of a society who is entitled to vote shall be eligible for appointment as a member of a committee thereof if-

(a) he is not in default in respect of any loan taken by him for such period as is specified in the bye-laws, or

(b)

(c) if he is not otherwise disqualified for appointment as such member, or

The provisions of Rule 32(1)(a) as well as the provisions of Section 115-C(1)(c) providing for disqualification of a defaulter-member are only required to be referred to to highlight the aforesaid legislative intent. The bye-law is, therefore, in consonance of these provisions.

8. The third challenge is to the amount of deposit being required to be made by the candidate for valid nomination. Earlier the amount of deposit was Rs.500/= which has been raised to Rs.7,500/- in the year 1998. With the fall in value of money and considering the object to keep out the candidates who had no serious intention to contest the elections or had no serious prospects of being elected, the revision of the amount from Rs.500/- to Rs.7,500/- cannot be said to be illegal or arbitrary nor can it be said that the amendment to the bye-laws is not in consonance with the provisions of Section 115-C of the Act as amended by the Amendment Act of 2002 nor is it in conflict with the provisions of Rule 32 of the Election Rules of the Gujarat Co-operative Societies Rules, 1965.

9. However, there is considerable substance in the last challenge in so far as the bye-laws provide that a candidate who has lost election and whose deposit is forfeited at the election will be debarred from contesting the elections for the next three years. While a candidate who obtains less than 20% votes cast at the election would be liable to have his deposit forfeited, no further disqualification can be attached to such a candidate. Neither the provisions of Section 115-C(2)(b) prescribing the disqualifications nor the provisions of Rule 32 of the Gujarat Co-operative Societies Rules, 1965 contain or permit any such disqualification. Such disqualification would also not be in consonance with the provisions underlying the provisions of Section 115-C or Rule 32 or any democratic principles.

10. Mr Joshi for the respondent-society submits that Rule 32(1)(c) itself provides that if a member is not otherwise disqualified for appointment as such member, he loses the right to contest the elections and that, therefore, the bye-laws can provide any disqualification which is not provided for in the Act or the Rules.

However, as indicated hereinabove, the disqualification to contest as a committee member has to be either as per the provisions of Section 115-C or Rule 32 or the bye-laws which are in consonance with the aforesaid statutory provisions.

11. Section 22 of the Act contains provisions as to who can become a member of a society. Section 25 provides that a nominal, associate or sympathizer member shall not be entitled to any share in the assets or profits of the society and that he shall have only such privileges and rights of a member as may be specified in the bye-laws of the society. Section 27 provides that no rights of membership shall be exercised till due payments are made to the society and Section 28 regulates the voting powers of members. Section 28 provides that no member of any society shall have more than one vote in its affairs and that where a share of a society is held jointly by more than one persons, each such person shall have, in the absence of preceding person or persons, a right to vote. By necessary implication, therefore, each member of a society has a right to vote and subject to provisions of the Act and the Rules, is also eligible to be a member of the committee.

12. The amendment to the bye-law prescribing that a candidate who has lost his deposit at the elections will be debarred from contesting elections in the next three

years is clearly inconsistent the statutory provisions and also contrary to democratic principles. Such provisions cannot take away the statutory right of a member of a society to contest elections when he has not incurred any statutory disqualification.

13. As regards the contention that the bye-laws amended in 1987 were not made by the general body, but only by the Board of Directors, is not required to be considered at this stage because admittedly the bye-laws amended in 1998 were as per the amendment passed by the general body of the respondent-society.

14. The petitioner who appears as a party-in-person has made certain grievances about the election notice or the agenda notice for amendments to the bye-laws not being circulated well in advance and the agenda not being given proper publicity. However, that would be a question of fact to be examined on each individual occasion for which the petitioner has alternative remedy available to him. In this petition, this Court has only examined the question of legality or otherwise of the amended bye-laws. These observations are made for any future cause of action when the petitioner has any grievance. In so far as the elections held in the past are concerned, this Court has not gone into the merits of any such grievance because the petition has become infructuous.

15. In view of the above discussion, the petition is partly allowed only to the following extent :-

- (i) Rule 13(b) of the Election Rules contained in the bye-laws of the respondent-society in so far as the election rules debar a person from contesting as a committee member on the ground that his election deposit was forfeited at the election in any previous year, is illegal.
- (ii) Rule 6 of the Election Rules which requires a particular amount to have been deposited with the respondent-society for three consecutive years, but as per the provisions of Section 115C(1)(b), the candidate is required to have an amount of Rs.20,000/- deposited with the respondent-society all throughout and there is no requirement that such deposit should have been made three years before the date of election on the date of filing nomination form and continuously thereafter in case the candidate is elected. Rule 6 shall accordingly stand amended in terms of Sec.

115C(1)(b) of the Act.

16. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

sundar/-